United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

815

APPELLANT'S BRIEF

IN THE
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 23,728
Criminal No. 375-68

UNITED STATES OF AMERICA

v.

JESSIE R. CARTER, APPELLANT

Appeal from an Order of the United States District Court
for the District of Columbia

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I

Whether the evidence and testimony in the record is sufficient to sustain the conviction of Appellant of first degree felony murder.

II

Whether the defendant's motion for a judgment of acquittal on the ground that to allow the jury to take the case would require them to speculate should have been granted.

III

Whether there was sufficient evidence to establish defendant's guilt on the theory of aiding and abetting.

IV

Whether the trial court should have granted defendant's motion for a mistrial because his prior criminal record had been brought in.

V

Whether it was prejudicial error for the trial court to furnish certain portions of the transcript to the jury.

VI

Whether it was prejudicial error for the trial court to refuse to dismiss the indictment by reason of failure to accord Appellant a speedy trial.

This case has not previously been before this Court.

STATEMENT OF THE CASE

On April 4, 1968, Appellant Jessie R. Carter and John R. Whiteside were indicted by the Federal Grand Jury in the District of Columbia on three counts in connection with the death of John W. Painter. Mr. Painter died on December 30, 1967, from gunshot wounds in the head and neck allegedly inflicted in the perpetration or attempted perpetration of a robbery. On July 17, 1969, Appellant Carter was tried separately and convicted of first degree felony murder (22 D.C. Code, Section 2401) and of robbery (22 D.C. Code, Section 2901). The second count charging first degree murder was dismissed on the Court's own motion. On October 24, 1969, Carter was sentenced to a term of from 20 years to life imprisonment on the felony murder charge and to a term of from 5-15 years on the robbery charge, the sentences to run concurrently.

The case has not previously been before this Court.

STATEMENT OF FACTS

Appellant Carter did not testify at the trial. However, a statement he made to the police shortly after being arrested was read to the jury by a detective of the Municipal Police Department and admitted into evidence (T. 278). The substance of his statement was as follows:

On the night of December 29, 1967 between 7:00 and 8:00 p.m. he was in the company of John R. Whiteside at 14th Street and Park Road, N. W. They hailed a taxicab driven by J. W. Painter and Whiteside told Painter they wanted to go to an address in the 2400 block of Hartford Street, S.E. Carter sat in the front seat opposite Painter and Whiteside sat in the rear. When they got to their destination they had some difficulty in finding the street address. They drove around looking for the address and when they couldn't find it, Whiteside told the cab driver to stop, but he kept on going. At that point Whiteside shot the driver twice behind and below his right ear with a 22-caliber derringer pistol. The car was still rolling forward and Carter had to put his foot on the brake to stop it, and reached his hand over to turn off the ignition. Painter then slumped over the steering wheel bleeding from the mouth.

Whiteside and Carter left Painter in the cab and walked to an apartment at 2402 Hartford Street where James Makel, a friend of Whiteside's, resided with Aleeta Crawford. There were several people in the apartment, and after he and Whiteside washed their hands in the bathroom Whiteside asked Makel to drive him and Carter back to Northwest Washington. They stopped for gas at a service station where Whiteside paid for the gas with money from a silver change carrier he had taken from Painter after the shooting.

Whiteside also gave Carter four one-dollar bills which had blood on them, and Carter put them on his knees to let them dry. When they got back to Northwest Washington they bought a half-pint of whiskey and went to Whiteside's apartment to drink it. Following this Carter left Whiteside's apartment and went down in the basement to sleep. The next morning he used one of the blood-stained dollar bills to buy cigarettes at a newspaper stand at 14th and Kenyon Streets, N. W. and used the other bills to buy wine and whiskey.

Aleeta Crawford testified (T. 151, et seq.) that on the night of December 29, 1967 she was at her apartment at 2402 Hartford Street, S.E. with her sister, her children and three male friends, Steven Peterson, Roger Williams and James R. Makel. As they were preparing to go out for the evening, Whiteside (whom she knew) and Carter (whom she did not know) came to the apartment. Whiteside was wearing a long coat with blood all over the front on the right side. She asked him if he was hurt and opened his coat to see if he was bleeding. As she did so she noticed he had a gun in his hand which she described as a two-shot derringer with a pearl handle. He also was carrying a change carrier, which was identified later as the change carrier taken from Painter. James Makel took Whiteside's blood-stained coat and threw it in the bathtub and ran water on it. Makel then wrapped Whiteside's coat in

Carter's coat and rolled them up into a bundle. During this time Carter said nothing other than words indicating he was anxious to leave. Makel, Whiteside and Carter then left the apartment and Makel returned about an hour and a half later. Miss Crawford also stated that she and her sister had known Whiteside for some time and that she had previously seen him with the same gun. She also stated that Whiteside was always fighting.

James Makel's testimony (T. 170, et seq.) was consistent with the testimony of Aleeta Crawford. He stated that he had known John Whiteside about 17 or 18 years, having served in the Army with him. He described how Whiteside and Carter came to the apartment at 2402 Hartford Street, S.E. the evening of December 29, 1967, and stated that he had never seen Jessie Carter before that night. When Whiteside came in the apartment he had on a checkered overcoat which was covered with blood from the chest all the way down. He opened the front of Whiteside's coat to look at him to see if he was hurt and Whiteside backed up into the bathroom, took the coat off, put it into the bath tub and ran some water on it. Carter then asked him if he would take them uptown, and he agreed to do so. As they were leaving the apartment he noted that Whiteside had the 22-caliber derringer in his hand, and he told him to put the gun away. He recognized the gun as one he

had seen Whiteside with previously. The two coats that Whiteside and Carter had been wearing when they came into the apartment had been rolled up into a bundle and were placed in the back seat of Makel's car. Makel drove, and Carter sat between him and Whiteside in the front seat. As they turned the corner from 22nd to 23rd Street, S.E. he could see the rear end of the taxicab and at that point Carter said "Whiteside didn't have to kill the man." Makel asked "What man?" and Carter said, "The cab driver back there" (T. 179).

The critical portion of Makel's testimony is as follows: (T. 179, 180-181)

"Q Did you go up on Suitland Parkway?

A Yeh.

Q What else was said beside, 'A cab driver'? What else was said?

A We went around Suitland Parkway, I was coming up toward Stanton Road, I think, and Carter was still talking at that time.

'He didn't have to kill the cab driver,' he said. He said he had the man up tight and Johnnie didn't have to shoot him.

By this time I asked Johnnie, 'You didn't shoot anybody, did you, Johnnie?' So Johnnie says to me, 'You know me better than that, man.'"

* * * *

"Q Do the words, in conversation when you used the words, 'up tight,' does that have any special meaning?

A In this particular case I should say it would because Jessie did reach over and put his arm up -- that he meant 'up tight.'

Q In other words, when he said 'up tight,' what did Jessie Carter do?

A Put his arm around my shoulder.

Q Would you show on me as though I were you and you were Jessie Carter just exactly what Jessie Carter did?

A I am up tight, and put his arm around my shoulder, and said something about, 'That's how I got blood on my arm.'

Q Excuse me? Would you repeat that?

A That's how he got blood on the sleeve of his jacket.

Q When he had his arm around you, how tight was his arm around you?

A Just on my shoulder.

MR. WEISEMAN: May I get Your Honor's indulgence for a moment:

THE COURT: Yes

BY MR. WEISEMAN:

Q Do the words 'up tight,' do they mean anything? What do the words 'up tight' mean?

A I would say in this case he either grabbed the cab driver and was holding him, or something like that.

Q When you asked Whiteside whether he had shot the cab driver, what did Whiteside say then?

A He said, 'No,' a couple of times."

They later stopped for gas and Whiteside paid for it with six quarters. Makel's testimony continued: (T. 183, 184-187)

"Q Okay. After Johnnie Whiteside gave you six quarters for gasoline, then what happened?

A I continued on South Capitol Street. I don't know whether I came up North Capitol or New Jersey Avenue but somewhere between there and up town, Jessie was still talking about, 'The guy didn't have to kill the cab driver.'

Somewhere in there he said, 'He killed him for some junk change.'

Q For some what kind of change?

A Junk change.

Q What does junk change mean?

A A little bit of money."

* * * *

Q When he said this, when Carter said that Whiteside killed the cab driver, do you remember his exact words?

A Whereabouts -- in other words --

Q The first time he said it.

MR. DWYER: Your Honor, I am going to object to this repetition. We have been over it a couple of times already.

THE COURT: Overruled.

BY MR. WEISEMAN:

Q Was there a time perhaps when curse words were used or some language used? Do you remember the words, 'crazy ass Whiteside' being used?

A I don't remember. I don't remember exactly what words were said.

Q Okay, what were the words you recall?

A I don't remember exactly. There weren't any curse words used until after we got all of the way up town.

Q Alright. After you left the gas station, then what happened?

A Like I say, we continued on uptown and Carter was still talking about, 'Johnnie didn't have to kill the cab driver.'

Somewhere in there he said that he hadn't been out on the street long, or something or other. He had just got out --

Q Excuse me. Don't mention it --

Q Something like that. He said he just got out of Columbia.

MR. WEISEMAN: May we approach the bench, Your Honor?"

After the stop for gas they again stopped to buy some whiskey, then went to Makel's wife's address at 3634 Georgia Avenue where Whiteside deposited his overcoat along with Carter's in a trash can (T. 191). Makel then dropped Whiteside and Carter somewhere in the Northwest section and returned to Hartford Street.

The following morning Makel went to his brother-in-law's home and told him that he was involved in the murder of the cab driver and had to leave Washington for awhile. He explained to the Court that his purpose in telling him that story was that he was going to be evicted from his apartment and he had to have some place for his three children to stay. He was asked why he didn't go to the police and tell them what he knew and he stated that he was at that time on parole and feared that any involvement in the cab driver shooting would be in violation of his parole (T. 194-195).

On cross-examination Makel was asked further questions about his use of the term "up tight" in his earlier testimony

(T. 207-209). He reiterated he understood it to mean that Carter had yoked the cab driver.

ARGUMENT

I

The Evidence and Testimony in the Record is Insufficient to Provide a Basis for a Finding that Jessie Carter Participated in, or Intended to Participate in, a Robbery of the Cab Driver. T. 151-213, 241, 263-278

In order to provide a proper basis for conviction of felony murder it is necessary to show that the defendant intended to participate, or did in fact participate in, the commission of a felony at the time the homicide occurred. Therefore, it was the burden of the prosecution to establish sufficient proof that Jessie Carter had an intention to participate in a robbery of the deceased cab driver. The fact that he was in the cab with Whiteside at the time Whiteside fired the fatal shot, and that he subsequently had in his possession some blood-stained bills given him by Whiteside is not adequate proof of any intent on his part to rob Painter, and it is entirely plausible that Whiteside's action in shooting the driver was taken without any foreknowledge by Carter. Carter's own statement to the police describing the sequence of events would, if unchallenged, reasonably support the conclusion that Whiteside alone was the perpetrator of the murder and subsequent robbery, and that Carter was

a victim of circumstance in that he happened to be in the cab with Whiteside when he decided to perpetrate this senseless act.

The only evidence in the record that would tend in any way to show active participation by Carter was James Makel's testimony that Carter had said "he didn't have to kill him -- he had him up tight," and Makel's explanation that he understood this to mean that Carter had yoked the cab driver before Whiteside shot him.

There are a number of reasons why Makel's testimony in this respect is incredible and inconsistent, and should have been disregarded by the jury. In the first place, Makel was a convicted felon, on parole, at the time of this occurrence. When apprised of the killing, he did not report it to the police, but instead, went to his brother-in-law the following morning and told him that he, Makel, was in the cab with Whiteside at the time the shooting occurred. He stated in court that he had deliberately lied to his brother-in-law, but insisted that the account he was giving to the jury was the correct version of the events. His credibility was accordingly, most seriously in question, and in the absence of any corroborating evidence pointing to Carter's complicity in the crime the jury should not have rested the conviction of Carter entirely on the conclusions drawn from the testimony of an admitted liar.

A further point of even greater significance is the fundamental implausibility of the premise that Carter in the circumstances could have attempted to yoke the cab driver, or that if he had done so the shooting of the cab driver could have occurred in the manner it did. Carter is a slender young man weighing approximately 130 pounds. The victim, Painter, on the other hand, weighed in excess of 200 pounds. For Carter to have attempted to yoke Painter in the front seat of the cab he would have had to wrap his left arm around Painter's shoulders in such a manner that the back of Painter's head would have been covered by Carter's left shoulder, and the area of Painter's neck in which the bullets entered would have been completely blocked. The evidence indicated that the two bullets entered the back of Painter's neck below his right ear, and it is patently a physical impossibility for this to have happened while Painter was being yoked. No matter how one visualizes the circumstances it is not possible to conceive how a man could yoke another and leave exposed the portion of the head and neck where the bullets entered in this instance.

It is also difficult and even impossible to conceive how a man of Carter's slight frame could, from a seated position in the cab, get his arm or arms around Painter's neck in such a way as to overpower or immobilize him and still leave Painter in an upright seated position so that the back of his neck would be

exposed to a person with a gun in the back seat. To gain physical control of Painter it would be absolutely necessary for Carter to pull him toward himself and attempt to get him in a semi-horizontal position across the front seat of the cab. For a 130-pound man to attempt this on a 210-pound man, from a seated position, would require prodigious strength and incredible muscular leverage. Again, from such a position, Painter's head would have been below the level of the back rest of the front seat and would not be exposed in such a way that Whiteside could have fired two bullets into his neck below the right ear.

In short, the sort of yoking which could be inferred from Makel's testimony is essentially incredible. The most plausible, and most likely, explanation of the shooting is that it took place with Painter seated in an upright position behind the wheel of the cab and with nobody's arm or arms around his neck and shoulders. This was the description of the situation that Jessie Carter gave to the police at the time of his arrest, and a logical analysis of the known facts and circumstances would support the accuracy of his description. A further corroborating item of evidence is the fact that there was no blood on Carter's coat other than a slight amount on the left cuff. If he were in the process of yoking Painter when the bullets were fired the blood spurting from the bullet wounds would undoubtedly have

saturated the shoulder and sleeve of his coat. [illegible] slumped forward over the steering wheel with blood running from his mouth, and it was in this position that the police found him. Carter stated that the car was still moving and the engine running, and that he put his foot on the brake and reached over to turn off the ignition key. It is quite plausible to assume that this is the way he got blood on the cuff of his coat sleeve. If he were, as the jury assumed, in a posture of poking Painter his coat would have been drenched with blood in the same manner as was Whiteside's.

This logical and reasonable analysis of the circumstances would support the conclusion that at the time of the shooting Carter was doing nothing more than sitting in the passenger's side of the front seat and was in no wise participating in an attempted robbery or slaying. In his statement he insisted that he was a passive onlooker, and abundant grounds exist for accepting this explanation up to and including the actual time of the shooting. Up to that point, there is no credible evidence to tie him to any intent to commit robbery or murder.

What then about the fact that Carter subsequently had in his possession four one-dollar bills taken from the victim after the shooting? His explanation is that Whiteside removed these bills from the victim's person and gave them to him. Whiteside

himself kept the victim's change carrier. The possession of these [illegible] by Carter necessitates one of two assumptions: (1) after Whiteside shot Painter he removed the bills from Painter's pocket and later, as Carter described it, handed them over to Carter; or (2) after the shooting Carter himself took advantage of the opportunity to rob the dying man and removed the bills from his person.

Although the factual evidence is not in any way conclusive, it is most logical to conclude that the bills were removed from Painter's person by Whiteside. It will be remembered the bills were soaked with blood, and Whiteside's coat was soaked with blood. Carter, on the other hand, only had a slight amount of blood on the cuff of his sleeve. It would not seem possible that he could have manipulated Painter's body around in such a way so as to remove the bills from his pocket without getting a large quantity of blood on his clothing. All facts, therefore, point to Whiteside as the perpetrator of both the killing and the robbery, and tend to show Carter as a passive witness.

No motion was made in the court below to set aside the verdict on the ground of insufficient evidence. However, it is well settled law that in case involving serious criminal offenses, the Court of Appeals will carefully check the record for error(s) prejudicial to the defendant, even though he has not raised such

error(s) if the error(s) affect the substantial rights of the defendant. Fed. R. Crim. Proc., R. 52(b); Tatum v. United States, 88 U.S. App. D.C. 386, 190 F.2d 612 (1951); Payton v. United States, 96 U.S. App. D.C. 1, 222 F.2d 794 (1955); Bradley v. United States, 102 U.S. App. D.C. 17, 249 F.2d 922 (1957); Wiborg v. United States, 163 U.S. 632. It is clear, therefore, that this Court may review the sufficiency of the evidence herein.

Guilt of the defendant must be established beyond a reasonable doubt, Cooper v. United States, 94 U.S. App. D.C. 343, 218 F.2d 39. The measure of proof required by the jury to sustain a conviction is higher then the standard used by the Court in submitting the case to the jury upon a finding that there is sufficient evidence for the jury to find a defendant guilty. Crawford v. United States, 126 U.S. App. D.C. 156, 375 F.2d 332 (1967). That high standard was not met in the instant case where the only real evidence that would indicate participation in a crime on the part of appellant was that by the much convicted Makel, a man who had told contradictory stories as to his own involvement in the crime to the police and to his brother-in-law and who originally had been arrested and charged with its perpetration. Makel, moreover, was not consistent as to what Carter had told him about the presence of blood on Carter's coat. These contradictions by the government's chief witness cannot be skimmed over. Hinton v.

United States, 91 U.S. App. D.C. 13, 196 F.2d 605 (1952). When they are considered along with the inherent inplausibility of the yoking in view of the relative size and height of appellant and decedent, the slight amount of blood on Carter's sleeve, and that the yoking supposedly took place while the car was moving, it is apparent that the convictions should not be upheld. With these facts, it is not possible to establish appellant's guilt beyond a reasonable doubt; indeed, reasonable jurymen in impartially weighing these facts must necessarily have had a reasonable doubt.

II

The Defendant's Motion for a Judgment of Acquittal on the Ground that to Allow the Jury to Take the Case for Consideration Would Require Them to Speculate (T. 312), Which Motion was Renewed at the Close of all the Evidence (T. 343), Should Have Been Granted Where There was Insufficient Evidence to Convict the Defendant of Pelony Murder and Robbery.

It is the responsibility of the government in a criminal case to establish guilt beyond a reasonable doubt; the jury must not be permitted to act on what must necessarily be surmise or conjecture Cooper v. United States, 94 U.S. App. D.C. 343, 218 F.2d 39 (1954), or to conclude upon pure speculation in a criminal proceeding. Curley v. United States, 81 U.S. App. D.C. 389, 160 F.2d 229, cert. denied, 331 U.S. 837 (1947). To permit the jury to undertake this case for consideration allowed them to indulge

in proscribed speculation. Here, there were directly conflicting versions of what happened on the evening of December 29, 1967, one put forth by the defendant and the other by Makel, an unreliable person, not present at the crime. The jury had no choice but to resort to conjecture in resolving the conflict. This it should not have been permitted to do. The trial court in these circumstances should have granted defendant's motion for acquittal pursuant to Rule 29(a), Federal Rules of Criminal Procedure. This Court should reverse the determination below and direct a judgment of acquittal on both counts of the indictment, pursuant to its authority under 28 U.S.C. §2106.

III

There was Insufficient Evidence to Establish Defendant's Guilt on the Theory that he Aided and Abetted in the Perpetration of the Robbery of the Victim. T. 390-392

It should be noted that the trial court instructed the jury with regard to the law of aiding and abetting or joint action in a criminal matter (T. 390-392). As pointed out in the instruction, it is necessary that a defendant contribute to some extent and in some way to the commission of the crime. Merely to be present at a crime is not conclusive evidence of guilt as an aider or abettor. Hicks v. United States, 150 U.S. 442 (1893). In order to constitute aiding and abetting, the defendant must in some way associate himself with the venture, must participate in it as something he wishes to bring about, and

seek by his action to make it succeed. Nye and Nissen v. United States, 336 U.S. 613 (1949). Nowhere in this case is it shown by probative evidence beyond a reasonable doubt that appellant, under any of the above criteria, was an aider or abettor of this crime. For the conclusion of guilt on the aiding and abetting rationale to be sustainable, we must rely on Makel's testimony and credibility. This will not do.

IV

It was Prejudicial Error for the Trial Court to Fail to Grant Appellant's Motion for a Mistrial on the Ground that His Prior Record had Been Brought In. T. 187-189

In this case, appellant chose, as he had the right to choose, not to take the witness stand. His character therefore was not in issue. Barnes v. United States, 124 U.S. App. D.C. 318, 365 F.2d 509 (1966). However, Makel's testimony that Carter "hadn't been out on the street long. . . He had just got out...of Columbia" (T. 187) improperly brought before the jury evidence from which the jury could reasonably deduce that Carter had a prior criminal record or that he had previously been imprisoned. This highly incriminating statement was made during the most critical portion of Makel's testimony when he was detailing the conversation that took place among Whiteside, appellant and him shortly after the robbery. Further, the ensuing bench conference must have served to indicate clearly to the jury that Makel had

said something improper, thus drawing their attention to this particular statement by Makel.

The trial court, at the bench conference, told defense counsel that he could inform the jury that appellant had, in fact just gotten out of jail on a drunk charge. This was an improper attempt to delegate to defense counsel a responsibility that belonged to the trial court. In the context in which the statement by Makel was made, it was highly prejudicial and therefore, the motion for mistrial should have been granted. The attempt at improper delegation compounded this error. Failing granting of the motion by mistrial, the very least that was required of the trial court was an attempt to make a curative instruction. That the trial court was aware of the inference that might be drawn by the jury as to a prior criminal record of appellant is indicated by its deliberate failure to send to the jury that portion of Makel's testimony in which the prejudicial statements were contained.

The proper remedy is reversal where it cannot be shown with reasonable certainty that harm has been undone after the admission of prejudicial evidentiary error. Leigh v. United States, 113 U.S. App. D.C. 390, 308 F.2d 345 (1962). The test to be used is the impact of the error on the minds of the jurors in the total setting -- that the defendant would have been convicted

any way is not the proper test. Kotseakos v. United States, 328 U.S. 750 (1946). There was a substantial probability here that the defendant's prior record had been impressed on the jury Barnes v. United States, supra. This is not a case in which an attempt was made to negative the prejudicial comments by striking them from the record as in Gorman v. United States, 380 F.2d 158 (1st Cir.) (1967). Even though the statement by Makel was voluntary and the U. S. Attorney did not expect it, the defendant at least had the right to an instruction that the statement could not be considered by the jury. Sykes v. United States, 79 U.S. App. D.C. 97, 143 F.2d 140 (1944). This is especially true where objection had been timely made to the prejudicial evidence.

V

It was Prejudicial Error for the Trial Court to Furnish the Transcript of Makel's Testimony to the Jury, Thereby Unduly Emphasizing That Portion of the Case. T. 407, 408, 409.

It is well settled that the recollection of the jury as to all pertinent facts of the case is controlling. Therefore proper objection to the jury's request for Makel's testimony (T. 407) was made on the ground that to permit the jury access to such testimony would tend to focus their attention on only one portion of the case (T. 408-409) to the prejudice of defendant's right to have them consider all phases of the case. Once

the jury has undertaken deliberations in a case, the trial court must be careful in permitting evidence to be restated or re-read to jurors in order to avoid placing undue emphasis on portions of testimony. Henry v. United States, 204 F.2d 817 (6th Cir.) (1963) at p. 821. Even though the jury requested and obtained appellant's statement to the police, it would have been better practice in a close case such as this one to permit the jury to make its determination on all the probative evidence presented.

VI

It was Error for the Trial Court not to Dismiss Appellant's Indictment by Reason of Failure to Accord Him a Speedy Trial.

There was unjustified delay in bringing this case to trial which deprived Carter of his Sixth Amendment right to a speedy trial. Carter was arrested on January 4, 1968; his case was brought to trial on July 14, 1969. Since a period of more than 18 months elapsed between his arrest and trial, there is prima facie merit in the claim of prejudicial undue delay. Hedgepeth v. United States, 124 U.S. App. D.C. 291, 364 F.2d 684 (1966). Even though this claim was not raised at the trial of the case, this Court may correct the error of the Court below. Fed. R. Crim. P. 52(b). Tatum v. United States, supra. The appellant did not waive this right by not asserting it at the time of the trial. Bynum v. United States, 408 F.2d 1207 (C.A.D.C.) (1969).

The delays in this case were not due to dilatory action or tactics of defendant's counsel. A motion for a mental examination was made by the defense on May 10, 1968; on May 16, 1968, and pursuant to court order, Carter was committed to Saint Elizabeth's Hospital for 60 days. However, the Acting Superintendent of St. Elizabeth's on July 15, 1968 requested and was granted on July 26, 1968 an additional thirty days to complete the mental examination. On January 10, 1969, after a court hearing, Carter was found competent to stand trial. Pursuant to another motion by defendant's trial counsel for a mental examination, the defendant was committed to St. Elizabeth's for an additional 60 day period on February 29, 1969. On June 30, 1969, the court once again found that defendant was competent to stand trial.

The purposes of the Sixth Amendment, as stated in United States v. Ewell, 383 U.S. 116, (1966), are to prevent undue incarceration, to minimize the anxiety and concern arising from public accusation and to limit the possibility that a long delay will impair the accused's ability to defend himself; time is the most important element to be considered in this regard. In this case, the delay was caused primarily by the time consumed in completing the properly requested mental examinations -- this factor was not within defendant's control. During the pre-trial period defendant was subjected to those very evils that the Sixth

Amendment is designed to prevent. For this reason, the judgemnt should be reversed and a new trial granted.

CONCLUSION

Appellant Carter respectfully urges this court to reverse the judgment of conviction on the felony murder and robbery counts, and to direct a judgment of acquittal on both counts. In the alternative, it is requested that appellant be granted a new trial.

Respectfully submitted,

John L. Kilcullen

John L. Kilcullen
Attorney for Appellant
(Appointed by this Court)

Peter F. Healey

Peter F. Healey